



Arizona State Senate *Issue Brief*

December 20, 2006

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

CAPITAL PUNISHMENT

HISTORY

Arizona is 1 of 38 states that permits use of the death penalty, although, of those 38 states, the New York and Kansas death penalty statutes were declared unconstitutional. Laws 2002, Fifth Special Session, Chapter 1, required juries, rather than judges, to determine whether aggravating and mitigating circumstances exist in death penalty cases and to decide if the death penalty will be imposed. The legislation was in response to the U. S. Supreme Court decision in *Ring v. Arizona*, 536 U.S. 584 (2002). A defendant convicted of first-degree murder is eligible for the death penalty if at least one of the statutorily enumerated aggravating circumstances is established. If aggravating circumstances exist, the jury enters the penalty phase of the trial, considers mitigating circumstances and determines whether the death penalty should be imposed.

In 2001, Arizona prohibited execution of inmates with mental retardation. The United States Supreme Court decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), soon followed, stating that a person with mental retardation cannot be sentenced to death. At least 14 states, including Arizona, suspend a death warrant against a mentally incompetent inmate until the inmate's competency is restored. If the court finds that an inmate is incompetent, the inmate remains in the custody of the Arizona Department of Corrections until the Arizona Supreme Court reviews the trial court's finding. If the Supreme Court upholds the finding of the trial court, the inmate is transferred to a licensed behavioral health or mental health facility. The Department of Health Services is responsible for the restoration of competency treatment of the inmate. If the Department of Health Services believes the inmate has been restored to competency, the inmate may have a hearing on the issue and, once there is a finding that the prisoner has been restored to competency, the Arizona Supreme Court will order the issuance of a death warrant.

Arizona does not specify a minimum age for capital punishment; however, the United States Supreme Court in *Roper v. Simmons*, 125 S. Ct. 1183 (2005), held that the Eighth and Fourteenth Amendments of the United States Constitution forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.

Under the Arizona Constitution, executions are performed by lethal injection. Inmates sentenced prior to November 23, 1992, may choose lethal injection or lethal gas.

Appeal of a conviction in a death penalty case where the defendant is sentenced to death is automatic and called the “direct appeal” (Arizona Rules of Criminal Procedure 31.2). Postconviction relief (PCR) proceedings are voluntary proceedings that must be initiated by the defendant within 90 days of the final conviction and judgment in the case. Postconviction relief is the proceeding by which a defendant, through counsel other than the defendant’s trial counsel, may challenge the trial and appeal on specific legal grounds, such as newly discovered evidence that would change the verdict or sentence if it had been presented at trial or a change in the law that applies retroactively could change the conviction. The trial court’s decision on postconviction relief may be appealed to the Arizona Supreme Court by either party, and the parties may file a petition for writ of certiorari requesting the United States Supreme Court to review the decision of the Arizona Supreme Court. The initial warrant of execution will be issued by the Arizona Supreme Court after the Court has affirmed the death sentence on direct appeal and either the first PCR proceeding is concluded or the period of time to file the PCR petition has expired.

PCR PROCEEDINGS

The Arizona Supreme Court must establish a list of competent PCR counsel for indigent defendants. Unless the counsel is employed by a publicly funded office, court-appointed counsel is paid at an hourly rate that does not exceed \$100 per hour for up to 200 hours of work, although the attorney may petition the Court for additional fees.

Laws 2006, Chapter 369, established the State Capital Postconviction Public Defender Office (Office). Beginning January 2007, the Court must appoint PCR counsel for indigent defendants from the new Office unless a conflict exists or the Court makes a finding that the Office cannot represent the defendant. If the

Office cannot represent the defendant, the Court may appoint counsel from the previously established list of competent counsel.

ADDITIONAL RESOURCES

- Arizona Department of Corrections
1601 W. Jefferson Ave.
Phoenix, AZ 85007
602-542-3133
Fax: 602-542-2859
<http://www.azcorrections.gov/DeathRow/DeathRowMain.asp>
- Death Penalty Information Center
1101 Vermont Avenue NW, Suite 701
Washington, DC 20005
202-289-7336
<http://www.deathpenaltyinfo.org/>
- American Bar Association
Evaluating Fairness and Accuracy in State Death Penalty Systems
<http://www.abavideonews.org/ABA340/>
- Arizona Attorney General
Capital Case Commission
Final Report – December 31, 2002
<http://www.azag.gov/CCC/FinalReport.html>
- The Arizona Republic
Special Report – “Death Row”
<http://www.azcentral.com/specials/deathrow/>